

DISCUSSION

Federal courts may not grant habeas relief to a person held in state custody unless the petitioner has exhausted his available state court remedies as to each of the issues presented. 28 U.S.C. § 2254(b)(1)(A); Rose v. Lundy, 455 U.S. 509, 518, 102 S. Ct. 1198, 1203 (1982); Fields v. Waddington, 401 F.3d 1018, 1020 (9th Cir. 2005) (“We may review the merits of Petitioner’s habeas petition only if he exhausted state court remedies.”). “[T]he exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims *before* those claims are presented to the federal courts.” O’Sullivan v. Boerckel, 526 U.S. 838, 845, 119 S. Ct. 1728, 1732 (1999) (emphasis added); *see also* Baldwin v. Reese, 541 U.S. 27, 29, 124 S. Ct. 1347, 1349 (2004) (to give the State the chance to pass upon and resolve violations of his federal rights, a state prisoner must exhaust his available state remedies before seeking federal habeas relief).

To satisfy the exhaustion requirement, a petitioner must “fairly present” his federal claim to the state courts, *i.e.*, give them a fair opportunity to consider and correct violations of the prisoner’s federal rights. *See* Duncan v. Henry, 513 U.S. 364, 365, 115 S. Ct. 887, 888 (1995); Peterson v. Lampert, 319 F.3d 1153, 1155-56 (9th Cir. 2003) (*en banc*). A state prisoner seeking relief with respect to a California conviction is required to fairly present his federal claims to the California Supreme Court. *See* Baldwin, 541 U.S. at 29, 124 S. Ct. at 1349 (a state prisoner must fairly present his claim to a state supreme court having the power of discretionary review); Keating v. Hood, 133 F.3d 1240, 1242 (9th Cir. 1998).

Petitioner alleges that he was convicted in the Riverside County Superior Court on October 25, 2013 (the “2013 Conviction”), and the instant Petition challenges the 2013 Conviction. Petitioner admits that he has not exhausted the claims alleged in the Petition, because he states, under penalty of perjury, that he did not appeal the 2013 Conviction and did not seek any post-conviction relief with respect to the 2013 Conviction. (Petition at 2-4.) In addition, the Court has

1 reviewed the dockets for the California Supreme Court, which are available electronically,² and
 2 takes judicial notice of their contents pursuant to Rule 201 of the Federal Rules of Evidence. A
 3 search of those dockets shows that Petitioner has not filed *any* proceeding in the California
 4 Supreme Court since the latter part of 2010, when he filed 11 habeas petitions.³ As those filings
 5 were made, and concluded, approximately three years before Petitioner sustained the 2013
 6 Conviction challenged by the instant Petition, they plainly did not exhaust the claims alleged in
 7 the Petition.

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 9 Accordingly, as Petitioner admits, the Petition is unexhausted, because he did not present
 10 his claims to the California Supreme Court, and afford that court a chance to rule on them, before
 11 seeking federal habeas relief. Because the Petition is fully unexhausted, it must be dismissed
 12 without prejudice. Rose, 455 U.S. at 522, 102 S. Ct. at 1205.⁴

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 14 For the foregoing reasons, it is plain from the face of the Petition that summary dismissal
 15 of the Petition is required. Accordingly, IT IS ORDERED that: the Petition is dismissed without
 16 prejudice; and Judgment shall be entered dismissing this action, without prejudice.

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 18 In addition, pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the
 19

20 ² See <http://appellatecases.courtinfo.ca.gov>.

21 ³ See California Supreme Court Case Nos. S186745, S186744, S186742, S186741,
 22 S185788, S185388, S185387, S185386 S185384, S185382, and S185379.

23 ⁴ Under prevailing law, a fully unexhausted federal habeas petition may not be stayed
 24 and must be dismissed. See, e.g., Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006)
 25 (holding that a fully unexhausted petition may not be stayed and observing: "Once a district
 26 court determines that a habeas petition contains only unexhausted claims, it need not inquire
 27 further as to the petitioner's intentions. Instead, it may simply dismiss the habeas petition for
 28 failure to exhaust."); Jones v. McDaniel, 320 Fed. Appx. 784, 786 (9th Cir. 2009) (affirming the
 dismissal of a fully unexhausted petition and denial of a stay, because a "*Rhines* stay is only
 available for a mixed habeas petition where at least some of the claims have been exhausted, and
 none of [petitioner's] claims were exhausted"); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001)
 (a district court is "'obliged to dismiss immediately'" a petition that contains no exhausted claims)
 (citation omitted).

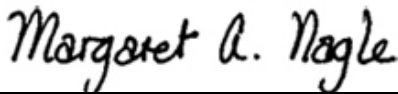
1 United States District Courts, the Court has considered whether a certificate of appealability is
2 warranted in this case. *See* 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484-85, 120
3 S. Ct. 1595, 1604 (2000). The Court concludes that a certificate of appealability is unwarranted
4 and, thus, a certificate of appealability is DENIED.

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6 DATED: March 18, 2014



R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

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10 PRESENTED BY:



MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE